

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33137

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 554
	)	
Plaintiff-Respondent,	)	Filed: July 18, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
WADE LAMONTE PETERSON,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Judgment of conviction for possession of a controlled substance and order for confiscation of weapons, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

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LANSING, Judge

Wade Lamonte Peterson appeals from his judgment of conviction for possession of methamphetamine, Idaho Code § 37-2732(c), which was entered upon a conditional guilty plea. He contends that the prosecution breached a plea agreement in a separate case which specified that the instant charge would be dismissed and not pursued. He further asserts that the district court abused its discretion by ordering confiscation of two guns and a baseball bat that had been in Peterson's possession. We affirm the judgment of conviction and the order confiscating the weapons.

I.

BACKGROUND

In August 2003, Peterson was arrested for the present felony offense and for five misdemeanor offenses. The prosecution filed a complaint charging Peterson with the felony and

only two of the misdemeanors. At the time set for the preliminary hearing on the felony, a magistrate dismissed the charge, without prejudice, because the State was unprepared to proceed. The misdemeanors were unaffected and were pursued at the magistrate court level. In September of 2003, the State reinstituted the present felony charge by filing a new complaint under a new case number. The State did not at that time issue a warrant for Peterson's arrest on the felony nor otherwise inform him that it had been refiled as a separate case.

In December of 2003, the parties reached a plea agreement in the misdemeanor case wherein Peterson would plead guilty to one charge, with an agreed sentence, and the other misdemeanor would be dismissed. After the plea was taken, Peterson's counsel stated:

Your Honor, I just want to make sure that everybody knows - this all came from a bunch of different charges and things, and this will resolve this entire case, just in case we don't think it does. I assume it would automatically, but I just wanted to put that on the record.

The prosecutor did not respond to this less-than-clear statement. At the close of the hearing, the magistrate dismissed one of the misdemeanors and commented that Count I (the present felony) has already been dismissed.

Peterson was eventually arrested on a warrant that was issued in the present case in July 2004. He filed a motion to dismiss this charge on double jeopardy grounds. At the hearing on the motion, the district court reviewed a transcript of the initial preliminary hearing when the felony was dismissed, a transcript of the change of plea hearing in the misdemeanor case, and the September 2003 complaint in the present case. The district court's statements at the hearing show that it understood that the import of the motion was that the prosecution's pursuit of this felony charge was precluded by the plea agreement in the misdemeanor case and that the issue presented involved interpretation of an ambiguous plea agreement.

In response to Peterson's motion to dismiss, the prosecutor contended that defense counsel's statements at the change of plea hearing regarding the "bunch of different charges and things" referred to the additional misdemeanor charges on which Peterson was arrested but which were not charged in the complaint. The prosecution further argued that this state of events, coupled with the fact that the felony was re-filed as a separate case before the change of plea in the misdemeanor case, showed that it was not intended that the misdemeanor plea agreement resolved the felony charge.

At the conclusion of the hearing, the district court generally agreed with the prosecution's explanation regarding the additional misdemeanors. The court stated that if it were to rule on the motion at the hearing, "I would deny the motion because of the fact that the possession of a controlled substance charge was dismissed without prejudice, not on the merits, and it had already been filed as a new case before [the change of plea in the misdemeanor case]." The district court elected, however, not to rule on the motion at that time, but instead, *sua sponte*, allowed Peterson the opportunity to present additional evidence in support of his motion. The court allowed defense counsel two weeks within which to present either the affidavits or live testimony of Peterson, Peterson's misdemeanor attorney and the misdemeanor prosecuting attorney concerning their understandings of the scope of the misdemeanor plea agreement--specifically whether final resolution of the felony charge was intended. Peterson's attorney stated that he would pursue the matter. The district court directed defense counsel to re-notice the matter for hearing when and if the evidence was procured.

When more than seven weeks had passed with nothing new submitted, the district court entered an order denying Peterson's motion. The court found that in accord with its statements at the hearing, "the parties' intention was not that the instant charge would be dismissed as part of a negotiated plea agreement in another related case."

Peterson entered a conditional plea of guilty to the felony possession charge, reserving the right to appeal the denial of his motion to dismiss. After Peterson filed a motion for release of his property that had been seized by the State, the State moved to confiscate a number of weapons and contraband found in Peterson's possession at the time of his arrest. Following two hearings at which Peterson contested the confiscation, the district court granted the State's motion.

## **II.**

### **ANALYSIS**

#### **A. Interpretation of the Plea Agreement**

On appeal Peterson abandons his argument, made below, for dismissal of this charge on double jeopardy grounds. Instead, he asserts that the prosecution breached the plea agreement in the misdemeanor case by filing the instant charge and that this matter is reviewable as fundamental error. Peterson asks this Court to interpret the ambiguous plea agreement in his favor.

Plea agreements are contractual in nature and are generally examined by courts in accord with contract law standards. *State v. Jafek*, 141 Idaho 71, 73, 106 P.3d 397, 399 (2005); *State v. Allen*, 143 Idaho 267, 270, 141 P.3d 1136, 1139 (Ct. App. 2006). The determination that a plea agreement is ambiguous is a question of law, but interpretation of that ambiguous term presents a question of fact. *Id.* at 272, 141 P.3d at 1141. Such interpretations require a trier of fact to discern the intent of the contracting parties, generally by considering the objective and purpose of the provision and the circumstances surrounding the formation of the agreement. *Id.* If the terms of a plea agreement are unambiguous and require no fact-finding, breach of a plea agreement may be raised as fundamental error. *Id.* at 271-72, 141 P.3d at 1140-41. Conversely, if the terms of a plea agreement *are* ambiguous and *do* require fact-finding to determine the intent of the parties, breach of a plea agreement may *not* be raised as fundamental error because appellate courts do not engage in fact-finding. *Id.* See also *State v. Lenon*, 143 Idaho 415, 417-18, 146 P.3d 681, 683-84 (Ct. App. 2005).

The plea agreement here was ambiguous with respect to the felony charge. Peterson asks this Court to interpret the plea agreement and argues that the circumstances show that the parties' intent was that the instant felony charge would not be pursued. Peterson overlooks that the district court has already made the requisite finding of fact that "the parties' intention was not that the instant charge would be dismissed as part of a negotiated plea agreement in another related case." This finding was made only after the district court expressly invited Peterson to present affidavits or testimony from the individuals who participated in negotiating the plea agreement and Peterson responded with no such evidence. The district court's finding is supported by substantial and competent evidence and will not be disturbed. *State v. Perry*, 144 Idaho 266, 269, 159 P.3d 903, 906 (Ct. App. 2007). Peterson has not shown that the State breached the plea agreement.

## **B. Confiscation of Weapons**

Pursuant to I.C. § 19-3807, the State moved to confiscate drug contraband and a number of weapons found in Peterson's possession at the time of his arrest: three knives, an ASP/baton, an axe handle, an M100 firecracker, a baseball bat, and two guns. The district court granted the motion.

Peterson contests only the confiscation of the two guns and the baseball bat. He argues that confiscation of the guns was improper because they are antiques and that confiscation of the

baseball bat was improper because it was not used as a weapon and was purchased as a gift for his son. He cites no authority, however, indicating that confiscation of antique weapons or of toys that can be used as weapons is impermissible.

A trial court's determination whether to allow confiscation under the statute is one of discretion. *See* I.C. § 19-3807(6). The district court determined that the baseball bat was found with a plethora of other weapons, leading to the conclusion that Peterson possessed it with the intent that it be used as a weapon. The court further held that because Peterson, as a term of his probation, was forbidden to possess firearms, confiscation of the antique guns was warranted. On this reasoning, the court ordered the items confiscated. We find no abuse of discretion.

### **III.**

#### **CONCLUSION**

The judgment of conviction and the order confiscating the weapons are affirmed.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**